

89-15

0218-00104

31320

Indian Bend Wash

United States Environmental Protection Agency
Region 9

In the Matter of :

Motorola, Inc.
Beckman Instruments, Inc.
Siemens Corporation
Edward H. Johnson, d.b.a. The Strip Joynt
Marro Plating
Plainville West
Salt River Project
Advanced Auto Supply

Docket No. 89-15

Respondents

Proceeding under Section 106 of the
Comprehensive Environmental Response,
Compensation and Liability Act of 1980,
as amended by the Superfund Amendments
and Reauthorization Act of 1986,
(42 U.S.C. § 9606)

I. Jurisdiction

This Order is issued to Respondents pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), by authority delegated to the Administrator of the United States Environmental Protection Agency (EPA), and redelegated to the EPA regions.

The Director of the Hazardous Waste Management Division,

1 EPA Region 9, has determined there may be an imminent and
2 substantial endangerment to the public health, welfare or the en-
3 vironment because of the release or threatened release of haz-
4 ardous substances from the northern portion of the Indian Bend
5 Wash Superfund Site ("IBW" or "IBW Site" or "Site") in Scotts-
6 dale, Arizona. The northern portion of the IBW Site is that por-
7 tion bounded by Chapparal, Scottsdale, and Pima Roads and the
8 Salt River.

9 This Order directs Respondents to undertake actions that EPA
10 has determined to be necessary to protect the public and the en-
11 vironment from this potential endangerment.

12 II. Findings of Fact

13 The following facts are a synopsis of data contained in the
14 Administrative Record of EPA's Record of Decision for the IBW
15 Site, dated September 21, 1988. This Record of Decision (ROD) is
16 incorporated by reference as if fully set forth herein.

17 A. In 1981, the Arizona Department of Health Services
18 determined that volatile organic compounds (VOCs) were present in
19 municipal wells located at IBW.

20 B. The Site was placed on the National Priorities List in
21 1983 as a result of the VOC contamination detected in the
22 municipal wells.

23 C. Concentrations of VOCs have exceeded 1000 parts per bil-
24 lion (ppb) in various City of Scottsdale ("City") production
25 wells at IBW.

26 D. Motorola, Inc. ("Motorola") operates an electronic com-
27 ponent manufacturing facility at 8201 East McDowell Road, Scotts-
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1 dale, Arizona, within the IBW Site. Motorola used on-site
2 evaporation/percolation ponds for the disposal of mixed chemicals
3 such as: solvents, waxes, and other chemical residue. On October
4 10, 1981, Motorola personnel reported a spill from a 500-gallon
5 waste solvent tank. In December, 1986, there was a release of
6 1,1,1-trichloroethane ("1,1,1-TCA") from the Motorola facility.
7 Soil gas samples from the facility indicate trichloroethylene
8 ("TCE") levels up to 500 ppb and tetrachloroethylene ("PCE")
9 levels up to 4900 ppb. Samples from ground water monitoring
10 wells at the Motorola facility indicate levels of TCE up to 2500
11 ppb.

12 E. From January, 1979 to March, 1982, Beckman Instruments,
13 Inc. ("Beckman") operated a facility at 350 North Hayden Road,
14 Scottsdale, Arizona, within the IBW Site. The facility manufac-
15 tured plainer gas discharge displays and trichloroethylene (TCE)
16 was used as a cleaning solvent. There is evidence that Beckman
17 disposed of TCE in on-site drains and directly onto unpaved
18 ground. On-site soil gas samples at the former Beckman facility
19 indicate TCE at 10 ppb and dichloroethylene ("DCE") at 19 ppb,
20 and downgradient ground water monitoring samples indicate TCE
21 levels up to 120 ppb.

22 F. Between 1960 and 1974, Dickson Electronics ("Dickson")
23 manufactured electrical components at various locations, includ-
24 ing 8700 East Thomas Road, Scottsdale, Arizona, within the IBW
25 Site. In 1974, Dickson was acquired by the Siemens Corporation
26 ("Siemens"). Siemens continued to operate the facility at 8700
27 East Thomas Road until July, 1982. As part of the zener diode
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1 manufacturing process, Dickson used TCE for wax-etching and waste
2 removal. Dickson sent spent TCE to on-site sewers and dry
3 wells/cesspools. Samples from on-site soil borings at the former
4 Dickson/Siemens facility indicate TCE concentrations up to 7,300
5 ppb and ground water samples at the facility show levels of TCE
6 at 73 ppb.

7 G. Marro Plating and Plainville West occupy the property at
8 7811 East Pierce Street, Scottsdale, Arizona, within the IBW
9 Site. Both companies have used TCE and 1,1,1-TCA in connection
10 with their on-site metal finishing activities. Samples from on-
11 site soil gas testing indicate concentrations of TCE at 20 ppb,
12 DCE concentrations of 19 ppb and 1,1,1-TCA concentrations of 6.5
13 ppb. Soil borings at the facility indicate 1,1,1-TCA concentra-
14 tions of 24.4 ppb. Ground water samples from wells approximately
15 300 feet downgradient indicate TCE concentrations of TCE at 73
16 ppb.

17 H. Edward H. Johnson did business as The Strip Joynt at
18 7315 East 2nd Street, within the IBW Site. From September 1972
19 to September 1986, Mr. Johnson used paint strippers in his on-
20 site operations. Mr. Johnson disposed of waste paint sludge on-
21 site at a rate of at least 5 gallons per month. Soil samples at
22 the facility show TCE levels of 200 ppb. Ground water samples
23 within 1/4 mile of the facility show TCE concentrations up to
24 1000 ppb.

25 I. The Salt River Project (SRP) owns and operates a number
26 of ground water wells in the IBW area that provide irrigation
27 water. SRP used lubrication oil in its well pumps that contained
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1 solvents with organic halide concentrations up to 1000 ppm.
2 Samples from soils near the SRP wells indicate concentrations of
3 dichloromethane of 1200 ppb, carbon tetrachloride of 400 ppb and
4 chloroform of 600 ppb. Ground water samples from SRP wells show
5 TCE concentrations of 463 ppb and chloroform of 28 ppb.

6 J. Advanced Auto Supply operates a facility at 7811 E.
7 McDowell Road, Scottsdale, Arizona, within the IBW Site.
8 Automobile components are machined at the facility. A September
9 1, 1988 Spill Incident Report states that the contents of a "cold
10 vat solvent tank" were disposed of into an on-site drain and the
11 subsequent odor of solvents was extremely strong. Surface soils
12 were sampled with an "HNU" instrument by the Arizona Department
13 of Environmental Quality and found to contain a concentration of
14 phenol of at least 5 ppm. Soil samples indicate concentrations
15 of TCE at 30 ppb.

16 K. TCE is a known animal and probable human carcinogen.
17 TCE can produce central nervous system depression and irritation
18 of the eyes, nose and throat. Exposure to high concentrations of
19 TCE may cause nausea and vomiting. It can also cause neurologi-
20 cal impairment, liver and kidney damage, and at high concentra-
21 tions, death. The primary drinking water standard for TCE is 5
22 ppb.

23 L. Chloroform is a known animal and suspected human car-
24 cinogen. It may also be mutagenic and cause birth defects.
25 Chloroform can cause liver and kidney damage, headaches, uncon-
26 sciousness and death.

27 M. Dichloromethane is a known animal and suspected human
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1 carcinogen. It is also known to cause mutations in animals.
2 Acute exposure to dichloromethane produces narcotic effects,
3 nausea, lassitude, headaches, labored breathing, unconsciousness
4 and death in humans. Chronic exposure can also produce be-
5 havioral and nervous systems disorders in humans, leading to
6 suicide.

7 N. Dichloroethylene is a possible human carcinogen. Ex-
8 posure to this chemical may result in liver function abnor-
9 malities, headaches, vision problems, weakness, fatigue and
10 neurological sensory disturbances.

11 O. The compounds described in Paragraph II.K, L, M, and N
12 are organic halide compounds.

13 P. People may be exposed to contaminated ground water
14 at or from the IBW Site through ingestion, bathing, cooking, der-
15 mal contact, and other domestic uses of water.

16 III. Conclusions of Law

17 A. Respondents are "persons" as defined in Section 101(21)
18 of CERCLA, 42 U.S.C. §9601(21).

19 B. The IBW Site is a "facility" as defined in Section 101(9)
20 of CERCLA, 42 U.S.C. §9601(9).

21 C. TCE, DCE, PCE, TCA, chloroform, dichloromethane, carbon
22 tetrachloride and phenol are "hazardous substances" as defined in
23 Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

24 D. The disposal of hazardous substances and the continued
25 migration of those substances in the ground water, and to the
26 ground water from contaminated soils at the IBW Site, constitute
27 a "release" or "threatened release" of hazardous substances into
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1 the environment as defined in Section 101(22) of CERCLA, 42
2 U.S.C. §9601(22).

3 E. Siemens is liable under Section 107(a) of CERCLA, 42
4 U.S.C. §9607(a), in part as a successor of Dick Jn.

5 F. Respondents are liable under Section 107(a) of CERCLA, 42
6 U.S.C. §9607(a).

7 IV. Determinations

8 Based on the Findings of Fact and Conclusions of Law, the
9 Director, Hazardous Waste Management Division, EPA Region 9, has
10 made the following determinations:

11 A. The release or threatened release of hazardous substances
12 and pollutants or contaminants from the IBW Site may present an
13 imminent and substantial endangerment to the public health, wel-
14 fare, or the environment. This determination is embodied in Ap-
15 pendix A attached hereto.

16 B. In order to prevent or mitigate a significant risk of
17 harm to human health and the environment, remedial action must be
18 taken to prevent migration or exposure to contaminated ground
19 water at and emanating from the IBW Site.

20 C. The remedial measures required by this Order are consis-
21 tent with the National Contingency Plan, 40 C.F.R. Part 300.

22 V. Work To Be Performed

23 Based upon the Findings of Fact, Conclusions of Law and
24 Determinations, Respondents are hereby ordered to implement the
25 following measures under the direction of EPA's Project Coor-
26 dinator:

27 A. Respondents shall finance and perform the implementation
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1 of the Work (also known as the Operable Unit ("OU")) as defined
2 by the ROD and this Order. "Work" means the implementation of
3 the OU and all other tasks to be performed by Respondents pur-
4 suant to this Order. The Work shall consist of the construction
5 and operation of a system to extract and treat ground water and a
6 study of alternatives for expanding the system and the
7 feasibility of recharging or reinjecting ground water at the
8 Site.

9 B. Respondents shall implement and complete the Work in ac-
10 cordance with the National Oil and Hazardous Substance Pollution
11 Contingency Plan (NCP), as set forth in 50 Fed. Reg. 47912
12 (1985), and all amendments thereto that are effective and ap-
13 plicable to any activity undertaken pursuant to the Order, and
14 also in accordance with the standards, specifications, and
15 schedules of completion set forth in or approved by EPA pursuant
16 to this Order. All Work shall be performed by qualified
17 employees or contractors of Respondents.

18 C. Requirements for the Work:

19 1. Ground Water Monitoring System:

20 Respondents shall identify a zone of contamination
21 for the Site by means of ground water monitoring wells as
22 specified in Appendix B and additional ground water monitoring
23 wells, if necessary. The zone of contamination at the Site shall
24 be deemed to include all ground water in the Middle Alluvial Unit
25 ("MAU") and Lower Alluvial Unit ("LAU") within the Site with con-
26 centrations of any hazardous substance higher than the one
27 specified in Table VII-2 of the ROD for that substance.

2. Ground Water Extraction System:

a) Respondents shall establish a zone of capture by extracting ground water to create an inward hydraulic gradient encompassing the entire zone of contamination both laterally and vertically. The zone of capture shall be verified by ground water monitoring in accordance with the OU Ground Water Monitoring System specified in Appendix B to this Order.

b) Respondents shall acquire access to existing ground water wells or construct new ground water wells with ground water pumping capacity sufficient to control the zone of contamination at the Site.

c) Existing City wells may be used for the ground water extraction system only if permission of the City is obtained by Respondents.

d) It shall be the responsibility of Respondents to assure control of ground water pumping by others in the vicinity of the Site so that the hydraulic control of the zone of contamination is maintained at all times. In addition, the Respondents shall adjust the zone of capture to account for naturally occurring changes in the hydrological system.

3. Ground Water Treatment Plant

a) Respondents shall construct a ground water treatment plant ("Plant") to treat at least 8400 gpm of ground water according to a design to be submitted by EPA (the "Design"). Respondents shall expand the capacity of the Plant beyond 8400 gpm if necessary to control the zone of contamination or if determined to be necessary by EPA for any other reason con-

1 sistent with the NCP.

2 b) During operation of the Plant, all treated
3 ground water shall meet federal and state standards for treatment
4 plant discharge levels prescribed in Table VII-2 of the ROD and
5 all other applicable state and Federal water quality regulations.

6 c) Any measurable noncompliance with the
7 prescribed water quality discharge levels shall be reported
8 orally to EPA within forty-eight (48) hours of discovery and in
9 writing within seven (7) days of discovery. The written submis-
10 sion shall include a description of the noncompliance and its
11 cause; the period of noncompliance, including the dates and
12 times; and, if the noncompliance has not been corrected, the an-
13 ticipated time it is expected to continue; and steps taken or
14 planned to reduce, eliminate and prevent reoccurrence of the non-
15 compliance. Compliance with these reporting requirements shall
16 not excuse any penalties resulting from noncompliance with the
17 prescribed treatment discharge levels.

18 d) As specified in the ROD, air stripping shall
19 be used to reduce volatile organic compound ("VOC") contamination
20 in water to meet state and federal standards as prescribed in
21 Table VII-2 of the ROD. The air stripping towers shall be
22 equipped with activated carbon absorption units and shall remove
23 95% of VOC air emissions. The exiting air shall be monitored
24 with continuous emission monitors ("CEMs") for the measurement of
25 VOC emissions.

26 e) Prior to achievement of routine operations,
27 Respondents shall either 1) deliver the water treated by the
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1 Plant to the City for delivery to its water supply customers un-
2 der conditions acceptable to the City, or 2) provide another on-
3 site end use of the water in accordance with applicable law, such
4 as reinjection.

5 f) Respondents shall acquire real property
6 suitable for construction of the Plant. This requirement shall
7 be satisfied through acquisition of the parcel described im-
8 mediately below or of some other parcel of equivalent
9 suitability, subject to the approval of EPA:

10 The North 330.00 feet of the West 130.00 feet of the East
11 491.67 feet of the West 842 feet of the South Half of the
12 Southeast Quarter of the Southeast Quarter of Section 25,
13 Township 2 North, Range 4 East of the Gila and Salt River Base
14 and Meridian, Maricopa County, Arizona.

15 4. Study of Ground Water Alternatives

16 Respondents shall submit a study to EPA that 1)
17 analyzes alternatives for expanding the pumping and treating
18 capability of the system at various locations to optimize cleanup
19 of the ground water and/or to supply additional water to the City
20 for supply to its customers in a manner consistent with the NCP
21 and 2) analyzes recharge and reinjection of ground water at the
22 Site to optimize ground water cleanup, consistent with the final
23 remedy to be determined for this Site.

24 VI. Schedule For The Work

25 Except where noted otherwise, all dates referred to in the fol-
26 lowing schedule are calendar days; however, should a deadline
27 fall on a weekend or a Federal holiday, the deadline shall be
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1 construed to continue to the next business day.

2 A. Respondents shall begin and complete installation of the
3 OU Ground Water Monitoring System in accordance with Appendix B
4 to this Order.

5 B. Within 30 days of the effective date of this Order,
6 Respondents shall present evidence of title to the real property
7 required by Paragraph V.C.3.f of this Order.

8 C. Respondents shall submit a Health and Safety Plan within
9 30 days of the effective date of this Order.

10 D. Respondents shall advise EPA of any objections to the
11 Design within 30 days of its receipt from EPA and begin construc-
12 tion of the Plant within 60 days of its receipt.

13 E. Respondents shall submit an Operations and Maintenance
14 ("O&M") Plan within 45 days of receiving the Design from EPA that
15 describes the proposed operating procedures for the Plant and any
16 proposed modifications of the Design. In addition, the O&M Plan
17 shall delineate any proposed modifications to the Ground Water
18 Extraction System, including any proposed deletion of wells.

19 F. Respondents shall submit a Quality Assurance/Quality Con-
20 trol ("QA/QC") Plan for water sampling procedures within 45 days
21 of receiving the Design from EPA.

22 G. Within 180 days of initiating construction of the Plant,
23 Respondents shall begin startup activities. Startup activities
24 shall include the initial period of operation of the Plant and
25 the Ground Water Extraction System to determine equipment
26 capabilities and actual operating parameters.

27 H. Respondents shall achieve routine operation and then, at
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1 the Respondents' option subject to agreement by the City and ap-
2 proval by EPA, either a) deliver the extracted and treated water
3 for use in the City's municipal water system, b) reinject the
4 water, c) provide some suitable combination of delivery and rein-
5 jection or d) transfer the Plant to the City.

6 I. Respondents shall provide the Study of Ground Water Al-
7 ternatives required in Paragraph V.C.4 within 270 days of achiev-
8 ing routine operations of the Plant.

9 J. Respondents shall sample treated water every seven days.
10 Results of these samples shall be directly transmitted to EPA and
11 the City of Scottsdale directly from the laboratory within seven
12 days of the sampling event.

13 K. Monthly Progress Reports

14 Respondents shall provide written progress reports to EPA on
15 a monthly basis. These progress reports shall describe all ac-
16 tions taken to comply with this Order, including a general
17 description of the Work activities commenced or completed during
18 the reporting period, Work activities projected to be commenced
19 or completed during the next reporting period, and any problems
20 encountered or anticipated by Respondents in commencing or com-
21 pleting the Work activities. These progress reports shall be
22 submitted to EPA by the tenth day of each month for work done the
23 preceding month and planned for the current month.

24 L. Reports, Plans, and Other Items

25 1. All reports, plans, specifications (including dis-
26 charge or emission limits), schedules, appendices, and attach-
27 ments required or established by this Order are, upon approval by
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1 EPA, incorporated into this Order. Any noncompliance with such
2 EPA-approved reports, plans, specifications (including discharge
3 or emission limits), schedules, appendices, or attachments shall
4 be considered a violation of this Order subject to penalties in
5 accordance with Paragraph XIII of this Order.

6 2. If EPA disapproves any plan or report (other than a
7 monthly progress report) or other item required to be submitted
8 to EPA for approval pursuant to this Order, Respondents shall
9 correct any deficiencies, by addressing all EPA comments, and
10 resubmit the plan, report or item for EPA approval within ten
11 (10) working days from the receipt of such disapproval.

12 3. Submission of a deficient plan, report or other
13 submittal is a violation of this Order subject to penalties in
14 accordance with Paragraph XIII whether or not resubmission cor-
15 rects the deficiencies of the original submission.

16 4. The Health and Safety Plan required by Paragraph
17 VI.C shall satisfy the requirements of the Occupational Safety
18 and Health Guidance for Hazardous Waste Site Activities [October
19 1985 (DHH 5 NIOSH) Publication No. 85-115] and EPA's Standard
20 Operating Safety Guides. Upon review and notice by EPA to
21 Respondents, Respondents shall implement the Health and Safety
22 Plan.

23 5. The QA/QC Plan required by Paragraph VI.F shall,
24 where applicable, be prepared in accordance with current EPA
25 guidance, Interim Guidelines and Specifications for Preparing As-
26 surance Project Plans, QAMS-DO5/80, and subsequent amendments to
27 such guidelines upon written notification by EPA to Respondents
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1 of such amendments. The QA/QC Plan shall include elements neces-
2 sary for the implementation of trial test(s) of the pumping,
3 treatment and end-uses implemented as part of the Work. The
4 QA/QC Plan shall include a description of the mechanism that
5 shall also be used to verify that the pumping, treatment and end
6 use process is operating within acceptable limits. Upon approval
7 and notice by EPA to Respondents, Respondents shall implement the
8 QA/QC Plan.

9 6. The QA/QC Plan shall specify utilization of stan-
10 dard EPA chain of custody procedures, as documented in National
11 Enforcement Investigations Center Policies and Procedures Manual,
12 as revised in November 1984, and the National Enforcement Inves-
13 tigations Center Manual for the Evidence Audit, published in Sep-
14 tember 1981, for all sample collection and analysis activities.
15 In order to provide quality assurance and maintain quality con-
16 trol regarding all samples collected pursuant to this Consent
17 Decree, the QA/QC Plan shall also:

18 a. Ensure that all contracts with laboratories
19 used by Respondents for analysis of samples taken pursuant to
20 this Order provide for access of EPA personnel and EPA authorized
21 representatives to assure the accuracy of laboratory results re-
22 lated to the Work.

23 b. Ensure that all laboratories used by Respon-
24 dents for analysis of samples taken pursuant to this Order per-
25 form all analyses according to accepted EPA methods or methods
26 deemed in advance satisfactory by EPA. Accepted EPA methods are
27 documented in the "Contract Lab Program Statement of Work for In-
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1 organic Analysis" and the "Contract Lab Program Statement of Work
2 for Organic Analysis" dated July 1985.

3 c. Ensure that all laboratories utilized by
4 Respondents for analysis of samples taken pursuant to this Order
5 participate in an EPA or EPA-equivalent QA/QC program. As part
6 of the QA/QC program and upon request by EPA, such laboratories
7 must perform at their expense analyses of samples provided by EPA
8 to demonstrate the quality of each laboratory's data. EPA may
9 provide to each laboratory a maximum of four samples per year per
10 analytical combination (e.g., four aqueous samples for analysis
11 by gas chromatography/mass spectrometry, four soil/sediment
12 samples for analysis by gas chromatography/mass spectrometry).

13 7. Respondents shall submit a quality assurance report
14 to EPA on a quarterly basis on January 30th, April 30th, July
15 30th, and October 30th of each year. This report shall contain
16 information that demonstrates that Respondents are complying with
17 this paragraph and the QA/QC Plan submitted and approved pursuant
18 to this Order.

19 8. An analytical and design data generated or obtained
20 by Respondents that are related to the Work shall be provided to
21 EPA within seven (7) days of any request by EPA for such data.

22 9. EPA employees and EPA's authorized representatives
23 shall have the right, upon request, to take splits of any samples
24 obtained by Respondents or anyone acting on their behalf in the
25 implementation of the Work.

26 10. During design, construction, and start-up ac-
27 tivities, Respondents shall notify EPA seven (7) days prior to
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1 any sampling conducted by them or anyone acting on their behalf.
2 EPA shall be notified thirty (30) days prior to the disposal of
3 any such sample, and EPA shall have an opportunity, upon request,
4 to take possession of all or a portion of such sample.

5 Respondents need not provide EPA with 7-day notice
6 for sampling relating to the routine operation of the Ground
7 Water Monitoring System. Prior to commencement of routine opera-
8 tion of the treatment system, however, Respondents shall provide
9 EPA with a schedule for all routine sampling relating to the
10 operation of the Ground Water Monitoring System. Respondents
11 shall notify EPA seven (7) days in advance of any changes in the
12 routine sampling schedule. Respondents need not provide EPA with
13 advance notice of changes in the routine sampling as a result of
14 unexpected conditions. Respondents shall, however, notify EPA
15 within forty-eight (48) hours of the occurrence of any such con-
16 ditions and shall provide EPA with the results of analysis of
17 such sampling when the results become available.

18 11. Respondents shall demonstrate their ability to
19 complete the Work and to pay all claims that arise from the per-
20 formance of the Work by obtaining, and presenting to EPA for ap-
21 proval within thirty (30) days of the effective date of this Or-
22 der, a performance bond or letter of credit. In lieu of any of
23 the two items listed above, Respondents may present to EPA,
24 within twenty (20) days of the effective date of this Order,
25 financial information sufficient to satisfy EPA that Respondents
26 have sufficient assets to make it unnecessary to require addi-
27 tional assurances. If Respondents rely on financial information
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1 for financial assurance, they shall submit such financial infor-
2 mation on a quarterly basis. If EPA determines the financial as-
3 surances to be inadequate, Respondents shall obtain one of the
4 two instruments listed above within 30 days of the EPA response.

5 12. Respondents shall maintain a segregated account
6 dedicated to funding their obligations pursuant to this Order.
7 Within thirty (30) days of the effective date of this Order and
8 at the beginning of every calendar quarter thereafter, Respon-
9 dents shall submit an account statement to EPA demonstrating that
10 the account is funded adequately to ensure performance of their
11 obligations under this Order for the following calendar quarter.

12 13. All data, factual information, and documents sub-
13 mitted by Respondents to EPA pursuant to this Order shall be sub-
14 ject to public inspection. Respondents shall not assert a claim
15 of confidentiality regarding any hydrogeological or chemical
16 data, any data submitted in support of a remedial proposal, or
17 any other scientific or engineering data. Respondents may assert
18 a claim of confidentiality as to any process, method, technique,
19 or any description thereof that Respondents claim constitutes
20 proprietary or trade secret information developed by them or by
21 their contractor(s) or the contractors' subcontractors. In addi-
22 tion, Respondents may assert business confidentiality claims
23 covering part or all of the information provided in connection
24 with this Order in accordance with Section 104(e)(7) of CERCLA,
25 42 U.S.C. § 9604(e)(7) and pursuant to 40 C.F.R. § 2.203(b) or
26 applicable state law. Any such claim shall be subject to EPA's
27 confidentiality determination procedures and, if the information

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1 is determined to be confidential, it will be afforded the protec-
2 tion by EPA provided in 40 C.F.R., Part 2, Subpart B.

3 14. Respondents shall preserve and retain all records
4 and documents now in their possession or control that relate in
5 any manner to the Site, regardless of any document retention
6 policy to the contrary, for no less than six years after the
7 achievement of routine operations of the systems required by this
8 Order, and shall also direct their contractors, their subcontrac-
9 tors, and anyone else acting on Respondents' behalf at the IBW
10 Site to do so. Records and documents shall be preserved in the
11 form of originals or exact copies, or in the alternative,
12 microfiche of all originals. Upon completion of the Work,
13 Respondents shall deliver copies of all such records and docu-
14 ments to the EPA Project Coordinator.

15 VII. Compliance With Other Laws

16 Respondents shall comply with all federal, state and local
17 laws and regulations in carrying out the terms of this Order.
18 All hazardous substances removed from the Site shall be handled
19 in accordance with the Resource Conservation and Recovery Act of
20 1976, 42 U.S.C. § 6921, et seq., the regulations promulgated un-
21 der that Act, and EPA's OffSite Disposal Policy, OSWER Directive
22 9834.11.

23 VIII. Project Coordinator

24 EPA has appointed a Project Coordinator for the Site who has
25 the authority vested in the Remedial Project Manager and the On-
26 Scene Coordinator by 40 C.F.R. Part 300, et seq., including such
27 authority as may be added by amendments to 40 C.F.R. Part 300, as
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1 well as the authority to ensure that this Order is implemented in
2 accordance with all applicable statutes and regulations. The EPA
3 Project Coordinator for the purposes of this Order is:

4 Jeff Rosenbloom
5 T-4-4
6 United States Environmental Protection Agency
7 Region 9
8 215 Fremont Street
9 San Francisco, California 94105 (415) 974-7997

10 The Project Coordinator for the City of Scottsdale for the pur-
11 poses of this Order is:

12 Jim Nelson
13 City of Scottsdale
14 3939 Civic Center Plaza
15 Scottsdale, AZ 85252 (602) 994-7093

16 Within four days of the effective date of this Order, Respondents
17 shall designate a Project Coordinator to monitor their progress
18 in implementing this Order and to coordinate communication be-
19 tween EPA and Respondents. EPA and Respondents may change their
20 respective Project Coordinators upon five days notice.

21 IX. Submittals And Approvals

22 All submittals and notifications to EPA required by this Or-
23 der or the plans submitted hereunder shall be made to the EPA
24 Project Coordinator at the address above.

25 All approvals and decisions of EPA made regarding submittals
26 and modifications under this Order will be communicated to
27 Respondents by the Director, Hazardous Waste Management Division,
28 or his designee. No informal advice, guidance, suggestions, or
comments by EPA regarding reports, plans, specifications,
schedules, or any other matter shall relieve Respondents of their
obligation to obtain formal approvals as required by this Order.

No approval by EPA, including approval of the Design submitted to Respondents pursuant to Paragraph V.C.3, shall constitute a warranty or any kind or relieve Respondents of their obligation to implement the Work in accordance with the requirements of the ROD, this Order, and all applicable laws and regulations.

X. Access

To the extent that access to or easements regarding property at the IBW Site is required for the proper and complete compliance with this Order, Respondents shall obtain access agreements from the owners or from persons who have control over the property within sixty (60) days of the effective date of this Order. Access agreements shall provide reasonable access to Respondents and EPA and their authorized representatives. In the event that access agreements are not obtained within the 60-day period, Respondents shall notify EPA within five (5) calendar days thereafter regarding both the lack of, and their efforts to obtain, such agreements. If necessary, EPA may exercise its legal authority to assist Respondents in obtaining access. In the event EPA exercises its access authorities under Section 104(e) of CERCLA, 42 U.S.C. §9604(e), in order to obtain access for the performance of any act required by this Order, Respondents shall be liable for reimbursement to EPA of any costs incurred in the exercise of such powers.

In the event that any Respondent transfers some or all of its property located within the boundaries of the IBW Site to a third party after the effective date of this Order, that Respon-

1 dent shall (a) assure that the instrument effecting the con-
2 veyance or transfer of title contains a copy of this Order, the
3 ROD and the listing of the IBW Site on the National Priorities
4 List pursuant to CERCLA; and (b) use its best efforts to assure
5 access to the property for EPA and Respondents from the third
6 party.

7 Nothing in this Order shall limit any access rights that EPA
8 or other agencies may have pursuant to law.

9 XI. Endangerment During Implementation

10 The Director, Hazardous Waste Management Division, EPA
11 Region 9, may determine that acts or circumstances (whether re-
12 lated to or unrelated to this Order) may endanger human health,
13 welfare or the environment and may order Respondents to stop fur-
14 ther implementation of this Order until the endangerment is
15 abated. EPA may also for any other reason permitted by law order
16 Respondents to cease activities at the IBW Site.

17 XII. United States Not Liable

18 A. The United States, its agencies, employees and other
19 representatives, shall not be liable for any injuries or damages
20 to persons or property resulting from the acts or omissions of
21 Respondents, their employees or other representatives caused by
22 implementation of this Order or otherwise.

23 B. The United States, its agencies, employees and other
24 representatives, shall not be deemed to be a party to any con-
25 tract with Respondents.

26 XIII. Noncompliance

27 A. A willful violation or failure or refusal to comply
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1 with any terms of this Order shall subject Respondents to a civil
2 penalty of up to \$25,000 per day in which the violation occurs or
3 failure to comply continues, pursuant to the provisions of Sec-
4 tion 106(b)(1) of CERCLA, 42 U.S.C. §9606(b)(1). Failure to
5 comply with any terms of this Order without sufficient cause
6 shall also subject Respondents to punitive damages of up to three
7 times the total costs incurred by the United States for Site
8 response pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. §
9 9607(c)(3).

10 B. EPA may order or independently initiate additional
11 response actions it deems necessary to protect public health,
12 welfare, or the environment.

13 XIV. Opportunity to Confer

14 Respondents may request a conference with the Assistant
15 Director for Superfund, Hazardous Waste Management Division, EPA
16 Region 9, or his staff to discuss the provisions of this Order.
17 At any conference held pursuant to such a request, Respondents
18 may appear by counsel or other representatives for the purpose of
19 presenting any objections, defenses or contentions which Respon-
20 dents may have or wish to make regarding this Order. The con-
21 ference will be recorded by a court stenographer. If Respondents
22 desire such a conference, they must make a request orally within
23 four (4) working days of the effective date of this Order, and
24 confirm the request in writing immediately. Requests shall be
25 made to the EPA Project Coordinator or Regional Counsel.

26 XV. Parties Bound

27 This Order shall apply to and is binding upon Respondents,
28

their officers, directors, agents, employees, contractors, successors, and assigns.

XVI. Notice of Intent to Comply

Within four (4) working days of the effective date of this Order, Respondents shall orally inform EPA of their intent to comply with the terms of this Order. The oral notice shall be confirmed within three (3) working days by written notice to the Director. Failure to provide such notice in a timely manner will be deemed by EPA to be a willful refusal to comply.

XVII. Notice to State

Notice of the issuance of this Order has been given to the State of Arizona. EPA will consult with the Arizona Department of Environmental Quality and Department of Water Resources, as appropriate, to ensure that the plans submitted by Respondents pursuant to this Order are consistent with State requirements.

XVIII. Effective Date

Notwithstanding any conferences that may be requested pursuant to the provisions of this Order, this Order shall be effective on July 31, 1989.

IT IS SO ORDERED on this 27 day of July, 1989 at San Francisco, California.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

by

James F. Zelikson for JZ

Jeff Zelikson

Director, Hazardous Waste Management Division EPA, Region 9